

Draft Amendment GC81

Date of Inspection: various (most recent **12 March 2018**)

Date of Report: **29 March 2018**

Report prepared by **Andrew Biacsi**



Fishermans Bend Planning Review Panel

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1 Introduction

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- 4 I have been requested by Norton Rose Fulbright Lawyers and Russell Kennedy Lawyers, on behalf of the number of stakeholders with interests in Fishermans Bend (**Client Group**), to consider the planning implications of draft **Amendment GC81** to the Melbourne and Port Phillip Planning Schemes (**Amendment**) and to provide expert evidence in respect of my findings. My assessment provides an overview of the key planning issues with matters pertaining to site specific issues being left to others to address.
- 5 **Attachment 1** provides a summary of my professional qualifications and experience in accordance with relevant Practice Note relevant top expert witnesses. **Attachment 2** provides a list of the interests that form the Client Group on whose behalf I have been engaged.
- 6 In preparing this report, I have:
- Inspected the site and surrounds;
 - Reviewed the Amendment documentation and Framework and relevant background and supporting documents;
 - Reviewed relevant provisions of the Melbourne and Port Phillip Planning Scheme;
 - Reviewed and considered the various submissions;
 - Reviewed the various submissions to the Panel including those on behalf of the Minister and the Melbourne and Port Phillip Councils;
 - Reviewed various statements of evidence, submissions and other information as circulated from time to time throughout the Panel's deliberations;
 - Reviewed relevant strategy documents, policy documents, practice notes and advisory notes, as necessary;
 - Attended conferences with legal advisers for the client group;
 - Considered relevant correspondence from the Panel and material circulated throughout the course of the Hearing, as circulated from time to time.
- 7 Fishermans Bend is an urban renewal project said to be '*unlike any other*' covering approximately 480 hectares of mainly industrial land spanning two municipalities - City of Melbourne (**MCC**) and the City of Port Phillip (**PPCC**).
- 8 In April 2015, the Minister for Planning (**Minister**), under section 20(4) of the Planning and Environment Act 1987(**Act**), approved Planning Scheme Amendment GC29, which introduced interim planning controls and updated the Framework to the Fishermans Bend Strategic Framework Plan (July 2014, amended April 2015).
- 9 In June 2015, Government established an independent Ministerial Advisory Committee (**MAC**) to provide community consultation and advice for Fishermans Bend. In October 2015, the MAC produced its first report – a review of planning for Fishermans Bend up to that time. In October, 2017 the



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MAC published its Report to the Minister for Planning on Draft Fishermans Bend Framework (**MAC Report**). This report contained a number of recommendations about the Framework to guide the Minister.

- 10 The Fishermans Bend Taskforce (**Taskforce**) was subsequently created in February 2016 as a dedicated unit within the Department of Environment Land Water and Planning (**DELWP**) to carry out strategic planning work for Fishermans Bend in response to one of the MAC's recommendations.
- 11 In November 2016, while the Draft Fishermans Bend Framework (**Framework**) and permanent planning controls were being developed, the Minister approved further *interim* planning controls as part of the Planning Scheme Amendment GC50 (and later updated by Amendment GC59).
- 12 The Amendment has been prepared to '*reorientate the trajectory*'¹ of and implement the vision for Fishermans Bend through a suite of permanent controls including amendments to the Melbourne and Port Phillip Planning Schemes and a new Fishermans Bend Framework. Fishermans Bend is said to represent a '*once in a century opportunity to undergird Melbourne's success as a city*.'²
- 13 Among the many descriptions used in the Framework to characterise the planning and strategic significance of Fishermans Bend and the scope of the opportunity its presents are the following:
 - It is an urban renewal project unlike any other.....³
 - Fishermans Bend can become a global benchmark.....⁴
 - Fishermans Bend is a golden opportunity.....⁵
 - Fishermans Bend is an unparalleled opportunity for urban renewal.....⁶
 - Fishermans Bend is Australia's largest urban renewal site...⁷
 - Fishermans Bend is not a blank canvas....⁸
 - Fishermans Bend will play a pivotal role....⁹
 - Fishermans Bend is an opportunity to set new benchmarks for inner city urban renewal....¹⁰

¹ See page 5 of the Foreword: Framework

² See page 1 of the Part B Submission of the Minister dated 14 March 2018.

³ See page 5 of the Foreword: Framework

⁴ See page 5 of the Foreword: Framework

⁵ See page 5 of the Foreword: Framework

⁶ See page 6 Executive Summary: Framework

⁷ See page 6 Executive Summary: Framework

⁸ See page 9 Context: Framework

⁹ See page 14 Metropolitan and economic context: Framework

¹⁰ See page 14 Metropolitan and economic context: Framework

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- Fishermans Bend is unique...¹¹
 - Fishermans Bend is the next chapter in Melbourne's growth story.....¹²
 - Fishermans Bend will boast unprecedented levels of walking, cycling and public transport connectivity that will set a new benchmark for Melbourne....¹³
 - A benchmark for sustainable and resilient urban transformation....¹⁴
 - Fishermans Bend is planned to be Australia's largest urban renewal Green Star – Community....¹⁵

14 The Framework is intended to provide direction on how the transition of Fishermans Bend will be managed....*“creating certainty for the community, landowners, developers, businesses and investors. It does this by establishing:*

- *a long term plan extending to 2050.*
- *a guide to inform the preparation and consideration of planning permit applications.*
- *clear strategic planning directions to inform public and private investment.*
- *a plan that enables the community, businesses and investors to make informed decisions that will assist in the realisation of the Vision.”¹⁶*

15 The need for certainty and a desire for transparency and consistency with the introduction of planning controls are variously referred to throughout the Framework. An acknowledgement that unlike other urban renewal areas, the developable land in Fishermans Bend is predominantly privately owned, the Framework observes that collaborative partnerships with the private sector are important to the success of the vision.

16 As the Framework also acknowledges:

- *This draft Framework must balance certainty of delivery with flexibility enabling the private sector to innovate and respond to site or market conditions in ways that deliver the agreed vision.¹⁷*

17 In terms of the decision making process to support the delivery of Fishermans Bend, the Framework is described as a *“statement of policy*

¹¹ See page 15 Metropolitan and economic context: Framework

¹² See page 21 Vision: Framework

¹³ See page 21 Vision: Framework

¹⁴ See page 21 Vision: Framework

¹⁵ See page 21 Vision: Framework

¹⁶ See page 6 Executive Summary: Framework

¹⁷ See page 15 Metropolitan and economic context: Framework

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*intent.*¹⁸ In terms of Government input and commitment to timing and delivery of infrastructure in particular, the Framework observes the following:

“Detailed decisions about the implementation and timing of actions and infrastructure delivery will be subject to community consultation and normal government policy and budget processes.

All projects and initiatives requiring funding will be carefully assessed against budget capacity, with rigorous business cases and cost benefit analyses applied as part of their economic impact assessment.

For infrastructure projects, this will require ensuring consistency with the government's Investment Lifecycle and High Value/High Risk Guidelines. For all other initiatives and actions, implementation will depend on the evidence base and likely net benefits.

- 18 Despite its often stated strategic significance and the unprecedented opportunity it apparently presents to break new ground and establish new benchmarks in metropolitan planning, urban renewal, transformative social and environmental engineering, an underlying sentiment contained in many of the submissions is a lack of certainty, transparency and consistency in the proposed controls, flaws in the underlying assumptions and a lack of commitment to the funding of major infrastructure.
- 19 Early delivery of public transport infrastructure is said to be critical to the success of the vision and yet, no Government commitment exists in terms of a plan or its funding. The Framework identifies that a comprehensive precinct based investment funding plan is being developed that *‘will consider a mix of funding sources, including direct developer pays systems such as an Infrastructure Contributions Plan.’*¹⁹ The detail of the funding plan and any contributions plan likely to involve private sector and investment and public funding are to be provided in the future.
- 20 Land contamination and geotechnical conditions are said to be sufficiently important in Fishermans Bend to be a potential risk to delivery of the vision, and yet the details are to be addressed at a later date. Planning for the provision of public open space and other community infrastructure has not been matched with a clear plan or commitment as to their procurement, funding and delivery.
- 21 Fishermans Bend is to establish a benchmark in relation to the provision of affordable housing and yet, there is still a lack of clear commitment and/or action in any meaningful sense in terms of the Government's role in addressing this issue from a broader community perspective that transcends the boundaries of Fishermans Bend. Fishermans Bend is regarded by the Framework as presenting *‘a unique opportunity to leverage the initiatives of Homes for Victorians and improve social and affordable housing supply in a well-located area.’*²⁰ And yet, the mechanisms for achieving this aspiration are not clear.

¹⁸ See page 7 Executive Summary: Framework

¹⁹ See page 67 Next Steps: Framework

²⁰ See page 15 Metropolitan and economic context: Framework

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- 22 There is no denying that the management of transition and ultimate execution of the vision for Fishermans Bend is a challenging exercise and one that calls for clarity about the vision, commitment from the various stakeholders, an appetite to embrace change and strong Government leadership. Shortcomings are evident in the drafting of the proposed planning controls which from my viewpoint, serve to undermine confidence in managing the transition process, in the Framework and the Amendment as a whole.
- 23 In my opinion, questions remain as to the extent to which the vision embodied in the Framework capitalises upon the opportunities presented by Fishermans Bend and the extent of prescription contained within the controls and policies outlined in the Amendment. It is one thing to herald the virtues of Fishermans Bend as a declared project of State Significance and the opportunity the project promises in terms of setting new benchmarks for urban renewal. It is quite another to actually create the environment necessary to facilitate that outcome.
- 24 Government involvement in the planning and renewal of Fishermans Bend has to date fallen far short of exemplary. Over the course of the past 7 years or so, Fishermans Bend could be fairly characterised as having become something akin to a planning and political labyrinth. Considerable uncertainty exists perpetuated by decision-making which appears to be reactionary, focused on the short term and/or lacking commitment and purpose. Responsibility in this regard rests fairly and squarely with Government.
- 25 The objectives of planning and those of the planning framework established by the Act²¹ set the foundation upon which decisions about the use and development of land in this State are based. They provide a sobering reminder of what the planning system is fundamentally about and what should be its focus. Among them are references to the following:
- *the fair, orderly, economic and sustainable use, and development of land;*
 - *the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community;*
 - *to ensure sound, strategic planning and co-ordinated action at State, regional and municipal levels;*
 - *explicit consideration of social and economic effects when decisions are made about the use and development of land;*
 - *to encourage the achievement of planning objectives through positive actions by responsible authorities and planning authorities;*
 - *to establish a clear procedure for amending planning schemes, with appropriate public participation in decision making;*
 - *to provide for compensation when land is set aside for public purposes and in other circumstances.*

²¹ See s.4 of the Planning and Environment Act 1987

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- 26 The extent to which the Framework and Amendment have responded to or advanced the objectives set out in the Act is a matter of judgement. In my opinion, the documentation raises a number of issues particularly in respect of fairness, sustainability, provision and co-ordination of infrastructure, participation in decision-making, soundness of the strategic planning and land appropriation/compensation considerations which are unclear.
- 27 Moreover, some submissions have fairly and reasonably queried governance arrangements for Fishermans Bend, and a potential way forward in terms of fostering certainty and continuity in its ultimate delivery. The MAC also dealt with the issue at Section 6.2 of its Report. On face value at least, the prospect of a properly constituted body with specific responsibility for the delivery of Fishermans Bend is an inviting one where such a body could provide *'strong leadership with a concentrated focus and a mandate to drive development, a hands-on approach to problem solving and the powers and authority to act.'*²²
- 28 The submissions from each of the Councils have raised fundamental concerns with key aspects of the Framework and the Amendment some of which requires a significant shift in thinking as to both the intention and implementation of the controls. Similarly, errors identified in the documentation or in the interpretation of the provisions which have served to substantiate the modelling of the built form controls and population targets. are also a concern.
- 29 Finally, one would be entitled to question the haste with which this, 'the pointy-end' of the process, is being driven and the necessity for this level of expediency in circumstances where the strategic positioning for Fishermans Bend has been ongoing for a period of some years and the work to date in reconciling the detail of the vision is at best *'incomplete.'* Various submitters, including the two Councils concerned (not mention the expert evidence) have identified a host of changes and further work to be completed before an informed decision can be taken.
- 30 The fact that the Fishermans Bend urban renewal project is a declared project of State significance under s.201F of the Act causes it to be regarded as a project having particular importance. That the delivery of the project is dependent upon a partnership being formed with the private sector to assure its success only heightens the imperative of getting the planning framework right. For that to occur, positive engagement with industry and a commitment by all involved in getting the right outcome ought to be the focus rather than adhering to a process focusing on expediency as the driver with the risk of a poor or ill-conceived outcome being the result.

²² See page 15 MAC Report, October 2017.

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- 31 A significant planning policy platform providing strategic justification for the Fishermans Bend Urban Renewal Area (**FBURA**) is Plan Melbourne. An ever expanding population in line with forecast trends that will see Melbourne's growth accelerate over the coming decades calls for an approach to metropolitan planning in urban renewal locations that seeks to optimise the opportunities presented by areas identified for significant urban growth such as Fishermans Bend.
- 32 The FBURA is sanctioned by Plan Melbourne to be a place where a transformative approach is to be taken to the optimisation of highly valuable urban land. Fishermans Bend (constituted by each of the four precincts) is a designated Major Urban Renewal Precinct (**MURP**) 2015-2051+ - a Priority Precinct and one that it is intended to accommodate major employment, housing and mixed use development supported by the necessary and timely provision of associated infrastructure.
- 33 Each of the designated MURP's provides opportunities for the central city to grow and accommodate more employment and housing. It is intended that they accommodate a significant amount of residential and jobs growth over the next 35 years.
- 34 Under Plan Melbourne, it is envisaged that the timing of land release in the MURP's needs to be in sync with policy drivers, market demand and the delivery of infrastructure and services.²³
- 35 In terms of housing growth, Direction 2.2 of Plan Melbourne acknowledges that there are significant opportunities for housing development in and around the central city. This includes Priority Precincts such as Fishermans Bend.
- 36 Policy 2.2.1 of Plan Melbourne acknowledges the following:²⁴
- *A number of major urban renewal precincts have been identified in the central city (as shown on Map 4). Maximising development opportunities of these precincts will minimise the need to increase residential densities in other parts of the city. The sequencing of infrastructure within these precincts will maximise their development potential and provide timely services and amenities for residents.*
 - *There is a need to find ways to give the market some flexibility to maximise development opportunities. For instance, additional development rights could be granted in exchange for the provision of additional amenity in the central city and other key urban renewal and structure plan areas.*
- 37 The Fishermans Bend Employment Precinct is a designated National Employment and Innovation Cluster (NEIC) in Plan Melbourne. The purpose of NEIC's is to improve the growth and clustering of business activity of national significance, particularly in knowledge-based industries.
- 38 Plan Melbourne acknowledges the provision of high quality public transport access to urban renewal precincts and NEIC's as a priority which includes

²³ See page 25 of Plan Melbourne.

²⁴ See page 50 of Plan Melbourne.



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modernising and strengthening the existing transport network.

- 39 Other themes of Plan Melbourne supportive of the overarching principles of the Amendment (and Framework) include:
- The encouragement of mixed use development and greater housing diversity and density near employment and transport.²⁵
 - Strengthening the role of planning in facilitating and delivering the supply of social and affordable housing.²⁶
 - Creating ways to capture and share value uplift from the rezoning process for policy priorities such as social and affordable housing.²⁷
- 40 The Amendment and accompanying Framework are generally supportive of the designation of Fishermans Bend as a MURP under Plan Melbourne but the question isn't so much one of why but how or how much? Questions as to the transformative nature of the Framework, the extent of change contemplated, the basis for some of the underlying assumptions of the Framework and those in the Amendment, population and growth expectations, infrastructure planning and implementation mechanisms (e.g. the controls etc.), development contributions etc. are all deserving of careful consideration. This does not appear to have occurred to the extent necessary.
- 41 Ultimately, the opportunities presented by the FBURA need to be capitalised upon to their fullest extent, maximised and harnessed in such a way as to attain the greatest benefit possible having regard to the constraints that exist, the challenges presented and the stated vision for the urban renewal area. In a holistic planning sense, it is about the optimisation of net community benefit in the terms contemplated by the State Planning Policy Framework.
- 42 An under-realisation of the potential of Fishermans Bend would be regrettable hence the call for strong leadership and commitment at a Government level, supported by a planning framework that allows for informed decisions to be made, fosters certainty and confidence and is conducive to the formation of collaborative partnerships, a factor considered important to the success of the Fishermans Bend project.

²⁵ See page 50 of Plan Melbourne.

²⁶ See page 56 of Plan Melbourne.

²⁷ See page 56 of Plan Melbourne.

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- 43 An analysis of the vision for the FBURA calls into question some of the underlying assumptions upon which the Framework (and draft controls) have been based. They include issues relevant to character and the distinction drawn between the various precincts, funding and delivery of infrastructure, population, employment and built form considerations, land use conflict, mechanisms to manage transition and housing affordability.
- 44 The proposed implementation mechanisms contemplate a suite of planning controls that have been prepared to realise the objectives and strategies in the Framework. Key elements of the proposed controls include building height and setback provisions, Floor Area Ratio and Floor Area Uplift, overshadowing controls, a minimum employment floor space provision, interface conflict provisions and provisions to manage the process of transition.
- 45 The Amendment documentation is said to have been informed by various background reports, including those listed in the Appendix to the Framework and others that sit outside the Framework.
- 46 The Framework itself is variously represented as a long term strategic plan for the development of Fishermans Bend; a statement of policy intent; a guide to investment and development; a document to guide the transition of Fishermans Bend; a document that provides direction on how the transition of the area will be managed, creating certainty for the community, landowners, developers, businesses and investors.
- 47 The Disclaimer to the Framework acknowledges that... *'The content of this document requires refinement and further assessment of options and feasibility, and will take into account community and stakeholder comment received in the consultation process.'* In this regard, the Framework is open to review and therefore change, as should be the controls and policies necessary to give effect to it.
- 48 The Framework (and associated planning controls) may well represent the beginning of the process but much work remains with details to be resolved in terms of infrastructure appropriation and financing, early implementation of public transport, detailed precinct planning, site and project investigations into the future together with a critical evaluation of the planning controls also necessitating further work.

3.2 Funding and infrastructure

- 49 The Framework is said to enable stakeholders to make an *'informed decision'* that will assist in the realisation of the vision. The Framework is also said to have responded to calls for certainty, transparency and consistency and in combination with the proposed planning controls will *'guide the transition of Fishermans Bend into a connected, liveable, prosperous, inclusive, healthy and environmentally sustainable place, home to 80,000 residents and host to 80,000 jobs.'*²⁸
- 50 Fundamentally, the purpose of the Framework is to *'guide investment and development by the State Government, local government and the private sector.'*²⁹

²⁸ See page 6 Executive Summary: Framework

²⁹ See page 6 Executive Summary: Framework

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- 51 A significant factor in the realisation of the vision and allowing stakeholders to make informed decisions must surely be the financial implications of the Framework and its vision. As the MAC noted in its October 2017 Report....

'The MAC's first Report identified the need for a short, medium and long term financial plan for the development of Fishermans Bend which considers all potential sources of funding including open space contributions, development contributions, special rates/levies, local and State government revenue, debt financing and possible Commonwealth Government funding.

*This plan is one of the most important signals to the investment market that the Government is serious about the Vision and ambition for the Area. It is noted that the Taskforce, in consultation with central government agencies and local government is well advanced in developing the funding plan.'*³⁰

- 52 The renewal of Fishermans Bend contemplates significant appropriation of privately owned land for public use including land for transport, roads, public open space and other associated community infrastructure. Funding is a fundamental and necessary part of the overall exercise in aiding stakeholders to come to an informed decision, as is the mechanism by which that appropriation is to occur.

- 53 The MAC Report acknowledges the following:

'The Fishermans Bend Taskforce is currently preparing a funding scheme that has four key value capture elements:

- *Developer/Infrastructure Contribution Plan*
- *Open Space Contributions*
- *Community Infrastructure Levy*
- *Council rates (including special charges) from the renewal area*

*It is reasonable to expect that these four sources will fund the required open space and local community infrastructure and provide the land needed for education, transport and other State services. Additional mechanisms and/or Budget commitments will be needed to provide early funds for items such as key transport and education facilities.'*³¹

- 54 In relation to major infrastructure works (including public transport) the MAC Report also acknowledges the opportunity for the Fishermans project 'to showcase Victoria's newly announced Value Creation and Capture Framework released by the Premier in March this year.'³²

- 55 The Value Creation and Capture Framework (**VCCF**) is signalled as a new approach for delivering infrastructure and in terms of the private sector 'means more transparency and certainty regarding Government's

³⁰ See page 10 MAC Report, October 2017.

³¹ See page 23 of the VCCF.

³² See page 10 MAC Report, October 2017.

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*expectation for infrastructure projects, as well as providing guidance for the types of innovative ideas that could be supported.*³³

- 56 The VCCF sets out a discussion on the various mechanisms of value creation and capture with considerable cross-over with planning and major projects. Under the heading ‘*What does the Framework mean for individual projects?*’...the VCCF acknowledges the following:

‘The delivery of core infrastructure and service outcomes is paramount. However, where appropriate, projects should consider opportunities to deliver broader outcomes. To that end, government departments and agencies, as project sponsors, will be responsible for preparing a project-specific Statement of Intent, setting out the project objectives, as well as a Value Creation and Capture Plan (VCC Plan), for approval by the relevant portfolio Minister.

Figure 6 (page 23) describes various value creation and capture mechanisms that may be considered as part of the VCC Plan. This list is not exhaustive and may evolve as Government’s value creation and capture processes further develop and mature.

*In developing the project specific VCC Plan, lead departments and agencies should select value creation and capture options, as appropriate to the type of project, and the surrounding context and circumstances.’*³⁴

- 57 It seems likely that the Fishermans Bend project will stand as a project-specific candidate for value creation and capture as contemplated by the VCCF. Aside from the contributions to be sought from the private sector via the mechanisms foreshadowed (in part) under the Amendment, the Fishermans Bend project will inevitably involve significant public expenditure, some of which will be required up-front or at least, early in the renewal process. The extent of that expenditure and its potential sourcing is somewhat blurred at the moment by the apparent uncertainty of the mechanisms to procure land for public purposes, the funding for doing so, the funding of infrastructure more generally, and its timing.
- 58 The detail of the Framework or the supporting documentation could hardly be said to constitute a ‘project specific VCC Plan’ of the kind contemplated by VCCF.
- 59 To the best of my knowledge, the planning framework governing Fishermans Bend has at least for the last 5 years proceeded on the basis of there being:
- No known development contributions plan in place despite there being a DCPO over the area;
 - No known infrastructure delivery plan in place;
 - No financial plan in place for the delivery of major public infrastructure;

³³ See page 31 of the VCCF.

³⁴ See page 31 of the VCCF.

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- A system in place for voluntary s.173 agreements to be entered into for the collection of arbitrarily derived development contributions with no known plan in place governing their collection, direction or expenditure;
 - A system that provides for individual development contributions plans to be negotiated on an individual, project specific basis; and
 - A system of collecting public open space contributions pursuant to Clause 52.01 of the planning scheme in accordance with usual arrangements, via permit conditions.

60 In the context of an urban renewal area which has been characterised as unique because of its significant private land ownership, where the opportunity for value capture resulting from the CCZ rezoning has already been diminished³⁵ and where the process of urban renewal calls for funding to be equitable and efficient for the sake of maintaining planning certainty and investor confidence, then Government needs to commit more than it has.

61 If the purpose of the Framework (and supporting planning controls) is to allow for '*informed decisions*' to be made and to guide investment and development, without there being a clear financial plan and development contributions package in place (inclusive of a fair value capture scheme), the prospect of restoring (let alone advancing) planning certainty and confidence is remote.

62 It should be remembered that whatever the outcome in Fishermans Bend, it must be one that maintains its attractiveness as a place to invest and develop, where the conditions of (or obstacles to) development (inclusive of development contributions, planning controls etc.) are not so distinctive or 'unique' that they diminish its appeal and competitiveness and therefore potentially compromise the realisation of the ultimate vision.

63 As it is, realisation of the present vision is one that is premised on a number of assumptions including (but not limited to):

- early delivery of public transport infrastructure;
- a reconciliation of funding schemes/financial modelling (as yet unresolved) to secure delivery of major public infrastructure;
- a target population of 80,000 persons which has been determined by methods that are not readily apparent;
- an assumed 75% build-out by 2050 which appears to have been arbitrarily chosen by the author of the Urban Design Strategy;
- value capture in the form of an arbitrary parameter (via the FAU scheme) aimed at facilitating delivery of a non-specific "public benefit" (the details of which are not clear but said to be derived from a document that sits outside the framework of the Planning Scheme);

³⁵ A factor also acknowledged at page 10 MAC Report, October 2017.

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- a target population of 40,000 jobs (excluding the employment precinct) which in turn, is based on a number of significant assumptions;
- a reconciliation of interface conflict with established industries /businesses in managing the transition process over the course of the planning period without a clear understanding of the nature or extent of those conflicts or their implications; and
- resolution of geo-technical, contamination and flooding constraints which are said to be left to be resolved or better understood at some future stage.

64 As the MAC Report fairly acknowledges:

‘Over time, Fishermans Bend will compete for private sector investment with other local urban renewal precincts such as Arden/ Macaulay and more generally with other infill locations. The level of value capture in the Area will affect the relative development viability of Fishermans Bend and this must be a consideration in planning for the Area. The funding arrangements should not unduly burden developers over other beneficiaries nor discourage Fishermans Bend development in favour of other locations. Opportunities for partnerships between private sector and government should be encouraged particularly where this will facilitate the early and cost effective delivery of infrastructure.’³⁶

65 In my opinion, an investor and/or developer in Fishermans Bend is entitled to know, at this stage in the process, what the likely development contribution regime is to be, the process by which such contributions are to be procured, and how will they be expended, by whom and over what timeframe. Similarly, the same questions are entitled to be asked by the community of their elected Government in terms of significance and scale of the public expenditure involved in terms of this *declared* project of State significance.

3.3 Character

66 The vision for Fishermans Bend is encapsulated within the Framework. The vision articulates a number of aspirations that will guide development of Fishermans Bend through to 2050. Each precinct has in turn its own aspirations which describe the overall outcomes that are sought in each area, including strategic land use priorities. Key public realm projects are said to help define and shape each neighbourhood.

67 Leaving aside the Employment Precinct, the remaining four precincts address the balance of Fishermans Bend. Whilst I support the precinct based approach and a distinction being drawn between the precincts in terms of a desired character, I am generally uncomfortable with the translation of the description used into the Planning Scheme (as is proposed).

68 The guiding principles governing land use throughout the precincts as articulated in the Framework are generally acceptable including a desire for predominantly mixed-use in Montague and Lorimer, predominantly commerce and mixed-use in Sandridge and predominantly residential in Wrrraway. Consideration given to the provision for public open space,

³⁶ See page 10 MAC Report, October 2017.

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heritage, transport connectivity and access are also generally accepted.

- 69 A fundamental issue in terms of character is the translation of the aspirations into the policies and controls that serve to implement the vision and this is where the principal concern rests. For example a concern for me is the extent to which the built form provisions limit the potential of the FBURA from realising its potential and whether the provisions in general, are overly cautious or require flexibility. How these provisions are ultimately tailored has the potential to influence character.
- 70 How the character aspiration was derived for each precinct and its basis needs to be critically evaluated particularly in terms of the underlying assumptions governing population targets (80,000 persons), employment targets (40,000 jobs), population densities, building heights and density and housing diversity. Open space planning and some of the key assumptions underpinning the strategy are also entitled to be questioned.
- 71 I am aware that there have been various explanations given as to the implications of the modelling in terms of character, built form, population density, open space and liveability based on key assumptions. These have and continue to be rigorously tested. A key consideration for me is that whatever the outcome of this analysis, it should be one that maximises the potential of Fishermans Bend rather than one that is necessarily driven by responding to what some have termed in acknowledging the future of Fishermans Bend as representative of 'a beautiful set of numbers.'³⁷

3.4 Built form & population density

- 72 It is clear that there have been a number of assumptions which have underpinned the built form controls not least of which is the assumed '*final indicative population across Fishermans Bend is 80,000 persons at 2051.*'³⁸
- 73 In relation to the projected population and demographics, the background documentation to the Amendment acknowledges the following:
- Fishermans Bend hinges on successful delivery of key infrastructure and services.
 - Planning for up to 80,000 residents in Fishermans Bend forming approx. 37,400 households and occupying approx. 40,000 dwellings will involve a range of planning and infrastructure actions and decisions.
 - The four mixed-use precincts of Fishermans Bend are each expected to have a distinctive character, which will influence the timing and type of development.
 - Predicting population and household growth for Fishermans Bend is challenging. The time scale is long (to 2051), final planning controls are unknown, as is the precise timing of major infrastructure

³⁷ See theage.com.au 26 March 2018: <http://paidcontent.theage.com.au/victoria-government/defence-victoria-government/article/precinct-set-transform-home-grown-engineering/>

³⁸ See page 5 Fishermans Bend Population & Demographics September 2016 (DELWP).

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delivery.³⁹

- 74 Rather than being the '*final indicative population*', the 80,000 persons is assumed to represent the population of Fishermans Bend at 2050 based on an assumption that 75% of the development capacity allowed for by the built form controls will have materialised by 2050 (said to represent a mid-point between divergent opinions on the likely take up being 50% and 100% by 2050).⁴⁰
- 75 The genesis of the 80,000 persons population estimate (or target) was not entirely clear upon my review of the documentation, although it appears that the figure was 'given' to the author of the Urban Design Strategy to work from and certain assumptions generated from that point.
- 76 In terms of the proposed built form controls and the endeavour to limit development for the purposes of creating a distinctive character for each of the Precincts, it is my opinion that this is not an unreasonable aspiration. As I have indicated previously, my concern therefore is more to do with the level of development contemplated and the extent to which the character contemplated for the various Precincts is reasonable, taking into account the significance of the challenge at hand.
- 77 The challenge is more than simply achieving the urban renewal of Fishermans Bend. The opportunity presented by the FBURA as a whole given its proximity to the central city and urban services generally, makes it valuable from a metropolitan planning perspective. In the words of Plan Melbourne, the challenge is more about maximising development opportunities and the development potential offered by the designated MURP's and finding ways to '*give the market some flexibility to maximise development opportunities*' in these areas.⁴¹
- 78 When I observe the planning for Wirraway for example, characterised as having a '*much more family-friendly character*' and benchmarked against development patterns occurring today in Kew East, Hampton and Pascoe Vale South, an ominous warning is signalled.⁴² Just as concerning is the attempt in the Amendment to legitimise nebulous concepts such as 'family-friendly housing' via a definition, as follows:⁴³
- 'Housing that supports the living arrangements of families, particularly with children. A visual relationship between the internal apartment areas and communal spaces provided for recreation and play are critical.'*
- 79 On a broader level, the underlying strategic basis for 'family-friendly housing' and how it comes to be acknowledged conceptually in a planning control, as a design objective and in a policy is highly questionable.
- 80 Ultimately, the adequacy of the 3D modelling in justifying the density of

³⁹ See page 2 Fishermans Bend Population & Demographics September 2016 (DELWP).

⁴⁰ See page 77, Urban Design Strategy, Hodyl & Co, September 2016.

⁴¹ See page 50 of Plan Melbourne.

⁴² See page 3 Fishermans Bend Population & Demographics September 2016 (DELWP).

⁴³ See page 9 of 13 of proposed DDO30 and local policy at Clause 22.15.

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development throughout each of the precincts will be addressed by others, however intuitively, I have concerns about the following:

- The origin of and basis for the FAR's and the significant reduction in development capacity throughout Fishermans Bend caused by the combination of proposed height, setback and FAR controls.
- If the FAR controls have been designed to align with the overall urban design character outcomes desired for each of the precincts, then the character outcomes for the precincts require re-evaluation.
- The setting of a FAR at levels which are artificially low, when paired with a 'value capture' mechanism such as the proposed FAU, potentially exposes the tools for appearing to be crafted for reasons other than perhaps their intended purpose.
- The setting of any mandatory overall building height (i.e. 4 storeys or 15.4 metres) is not supported anywhere in the Amendment.
- The significant re-calibration of building heights to the extent envisaged across the FBURA and consequential impact on 'reorientation of the trajectory' of Fishermans Bend (as proclaimed in Minister's Foreword to the Framework) is a concern in the context of a metropolitan strategy that calls for the maximisation of the development potential and opportunities in the MURPs.
- The overly prescriptive and unnecessarily complex drafting of "Built Form Requirements at Table 1 to the proposed DDO's should be reconsidered.

3.5 Floor Area Uplift (FAU) and public benefit

81 The principle behind FAU and value capture is well understood. Indeed, the Government has a Framework that explains how it proposes to go about '*enhancing value creation through capital infrastructure projects, development of public land and precinct projects, and the types of ideas that will be supported.*'⁴⁴

82 Plan Melbourne defines 'value uplift' in the following terms:⁴⁵

Value uplift: *The uplift in future economic and social value created by the construction of significant infrastructure or rezoning land. Value uplift is often referred to in the context of capturing some of the value to deliver broader public benefits.*

83 Under Direction 2.3 of Plan Melbourne, the following policy applies:

Policy 2.3.4 Create ways to capture and share value uplift from rezonings

There is an increasing need to encourage the development of more affordable housing, including the integration of social and affordable housing options within major urban renewal developments.

⁴⁴ See page 7 of the VCCF.

⁴⁵ See page 140 of Plan Melbourne.

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There is scope to capture some of the value created by the rezoning process for policy priorities such as social and affordable housing.

Urban renewal precincts and sites offer significant opportunities to deliver tangible broader public benefit through their rezoning for social or affordable housing, as well as local assets such as open space and community facilities.

Consideration needs to be given to developing a new requirement that when land is rezoned to allow for higher value uses, a proportion of the value uplift should be contributed to the delivery of broader public benefit outcomes such as social and affordable housing. [underlining is writers emphasis]

- 84 It may be trite to observe however, the Amendment is not one which seeks to rezone land and in a way, as the MAC Report observes, opportunities to capture 'value uplift' from the rezoning of land in Fishermans Bend have already been missed. Such has been Government decision-making to date. Indeed, the MAC Report goes on to acknowledge that any future rezoning of any part of the Fishermans Bend Employment Precinct should be linked to the introduction of a comprehensive value capture scheme.
- 85 The FAU is said to be a key element of the proposed planning controls. It is to provide the opportunity to support the realisation of the *Fishermans Bend Vision* and sustainability goals by enabling a developer to exceed the defined FAR control in exchange for the provision of a broader public benefit. What constitutes a public benefit is not defined by the proposed controls.
- 86 The Framework asserts that FAR and FAU schemes are most effective when aligned with strategic priorities for a neighbourhood precinct, such as delivering affordable housing, open space or nominated community infrastructure hubs.
- 87 Under the Amendment, all development will still be required to meet all of the built form controls for the relevant site to ensure that the preferred neighbourhood character is achieved and amenity outcomes are met.
- 88 The Framework goes on to observe that a FAU allows a developer to build more floor area on a site (above that allowed by the FAR) in exchange for making a contribution of an agreed public benefit and the public benefits that this delivers should be aligned with the identified needs of the community.
- 89 The Framework identifies the following public benefits (in order of priority):
- **Affordable housing:** developers can seek to apply a FAU on their site which is transferred to registered housing associations (see objective 3.9). For every one affordable housing unit delivered, the developer is able to construct an additional eight dwellings for private sale.
 - **Community infrastructure:** developers can seek to apply a FAU on their site to deliver identified community hubs (see strategy 3.1.1 for the range and location of hubs where this applies). For every 100m² of community infrastructure delivered, developers are able to deliver an equivalent value of residential floor area.

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- **Additional public open space:** *developers can seek to apply a FAU on their site to deliver public open space that is in addition to the identified open spaces within this draft Framework and the required 8% public open space contribution. This public open space must be transferred across to the relevant authority. For every 26m² of public open space delivered, developers are able to deliver an equivalent value of residential floor areas.*
- 90 The Framework also includes the following strategy of relevance to FAU and incentivising the provision of affordable housing:
- *Introduce planning incentives for the delivery of affordable housing via a Floor Area Uplift. Delivery of affordable housing should be the highest priority public benefit sought through the uplift. Affordable housing will be required to be transferred to registered housing providers to secure this affordable housing in perpetuity.⁴⁶*
- 91 The relevant trigger for entering into and calculating the FAU and public benefit is found in the CCZ1 under Clause 4 – buildings and works permit requirement. Ultimately, the calculation of the FAU and public benefit is to be in a manner agreed to and approved by the responsible authority and is to be secured by a s.173 agreement.
- 92 The calculation of FAU and public benefit is to be guided by the document published by DEWLP and titled ‘How to Calculate Floor Area Uplifts and Public Benefits in Fishermans Bend, October 2017.’ This is not a document that is proposed to form part of any planning scheme. Rather, it is in effect an Information Sheet, a document that is noted to be publicly available and updated regularly and is to be included as a reference document in both planning schemes. Its purpose is to aid or inform the process of decision-making.
- 93 The 3 categories of public benefit set out in the document generally correspond with the Framework but (unlike the Framework) are not afforded any priority in terms of the order of their provision. The document is in any event, a poorly drafted document and one that would fall far short of the test for it being referenced let alone, incorporated into the planning scheme.
- 94 The manner in which the FAU and public benefit provisions are to operate is largely the same as those which were introduced by the Minister into the Melbourne Planning Scheme for the Central City in November, 2016.⁴⁷ This is despite serious reservations of the Panel in Amendment C270 in relation to the FAU Scheme and its recommendation to abandon that part of the Amendment.
- 95 The concerns for an FAU scheme being introduced in Fishermans Bend are possibly even more complex and alarming given the expectation of (if not reliance upon) early delivery of significant public infrastructure; the absence of a development contributions plan or financial plan to underpin the project; and a Framework and suite of planning controls that contemplate a complex and uncertain process of procuring private land for various public purposes (whilst diminishing the capacity and value of that land in the process).

⁴⁶ See Objective 3.5 and Strategy 3.5.1 of the Framework

⁴⁷ Refers to Amendment C270 to the Melbourne Planning Scheme

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96 Responsibility for and the delivery of infrastructure, its funding and timing are significant issues central to the realisation of the vision for Fishermans Bend. They remain 'live issues' in respect of which there is considerable uncertainty particularly for landowners/investors who are being encouraged to join with the Government in a collaborative sense to assure the success of the project. The FAU scheme introduces another element of uncertainty into what is already a very uncertain landscape.

97 As the Submission of the City of Port Phillip⁴⁸ observes of the FAU Scheme:

'...there are significant issues associated with the FAU Scheme. It is voluntary. It perpetuates an under-provision of infrastructure. It is ad hoc and likely to be unreliable and importantly, in Victoria it is untested, save for the Melbourne 270 provisions.'

98 This element of the Amendment needs to be critically evaluated in terms of its benefit and the manner in which it is intended to be used to deliver the outcomes it promises to address, rather than perpetuate uncertainty as it presently does.

3.6 Overlays

99 In terms of the overlays proposed by the Amendment, the following are envisaged:

- Replace the existing DDO schedule guiding built form in Melbourne (DDO67) and Port Phillip (DDO30) with new schedules;
- Replace the existing PO schedule guiding car parking provision in Melbourne (PO13) and Port Phillip (PO1) with new schedules; and
- Introduce an EAO over land in the Lorimer Precinct in both planning schemes.
- Introduce a new Schedule 2 to the Development Plan Overlay (DPO2) into the Port Phillip Planning Scheme which is said to protect areas of strategic importance to ensure development achieves defined outcomes.

100 The Amendment does not propose to change the DCPO's that currently apply to Fishermans Bend under the planning schemes for Melbourne (DCPO1) and Port Phillip (DCPO2).

101 Similarly, the Amendment does not alter the application of existing overlays over parts of Fishermans Bend such as the Special Building Overlay (SBO), City Link Project Overlay (CLPO) or Heritage Overlay (HO).

102 In terms of the overlays proposed, I generally support the tools that have been selected and the intention behind them, save for the proposed DPO2 under the Port Phillip Planning Scheme.

103 For similar reasons to those expressed by Mr. Glossop,⁴⁹ I consider the proposed DPO is both unreasonable and unnecessary. Many of the

⁴⁸ See paragraph 242 Stage 1 submission prepared by Maddocks, 20 March 2018.

⁴⁹ See page 24 of the Planning Evidence Statement of John Glossop.

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provisions contained in the proposed schedule are vague, perpetuate uncertainty and therefore are unfair. The 'idea' of the DPO and further possibility of an 'opt in' provision for developers to avail themselves of the DPO option appears to have originated from the MAC.

- 104 I understand the intention behind the DPO is to allow for some flexibility in the master-planning of super-lots or strategic areas *'to allow for the broader outcomes set out in the draft Framework to be delivered in a more co-ordinated manner and to allow for land use planning and industry curation to be integrated.'*⁵⁰ As a matter of general principle, the intention behind the use of the DPO tool is reasonable, the question as to its suitability rests with the detail in the drafting.
- 105 If a DPO was to be considered I regard the wording of the schedule as presently drafted to be unacceptable and would require a significant overhaul to remove the uncertainty of the various requirements. I also regard the inclusion of a landowner/developer-led 'opt-in' or 'opt-out' provision to be necessary if a DPO was to apply, unless greater certainty was assured by the drafting of the provisions.
- 106 The retention of the current DCPO in circumstances where there is yet to be developed or approved a development contributions plan for Fishermans Bend although not ideal, at least preserves the status quo and allows a way forward until that occurs. Presumably, the current arrangement for collecting development contributions via permit conditions requiring an agreement under s.173 of the Act to be entered into, would continue to apply or otherwise a site specific development contributions plan would need to be agreed with the Minister for individual projects.
- 107 Finally, in relation to the provision of public infrastructure including streets, laneways and public open space and the delivery of this infrastructure, the current mechanisms create further uncertainty.
- 108 It is understood that the intended effect of the proposed planning controls is *'to govern the development of land by prohibiting development which does not make provision for designated public open space and new streets.'*⁵¹
- 109 The Ministers Part B submission⁵² sets out the following explanation:
- e. *It is anticipated that new streets, laneways and open space required for the anticipated population will be delivered through the imposition of mandatory conditions on development permits which will require them to be provided in accordance with the relevant plan.² As such, it will be unnecessary to rely on the Floor Area Uplift scheme or other funding mechanisms to meet this minimum provision.*
 - f. *Community infrastructure will be funded through existing development contributions currently collected and a future suitable mechanism, yet to be finalised, but the FAU scheme provides a valuable opportunity to see early delivery of much needed facilities.*

Footnote #2 to paragraph e) above states: 'The exception to this proposition is instances where

⁵⁰ See page 29 MAC Report, October 2017.

⁵¹ See page 11 of the Part B Submission of the Minister dated 14 March 2018.

⁵² See page 3 of the Part B Submission of the Minister dated 14 March 2018.

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whole sites are proposed to be used for public open space in which case, it is intended that they be acquired. See Taskforce Statement, Fishermans Bend Options for the Funding of Open Space, 13 March 2018.'

- 110 The validity of the arrangements for appropriating privately owned land for a public purpose in the manner contemplated by the proposed controls is ultimately a matter for legal submission and argument.
- 111 That said, from a planning point of view I consider the requirements to set aside land for a public purpose in the manner contemplated by the controls not only unreasonable in my view, but also unworkable.
- 112 The Framework contemplates the substantial provision of public infrastructure including public open space. The mechanism for procuring the land via an appropriation mechanism that virtually prohibits all forms of development unless the land is set aside and vested in the relevant public body as a precondition to permit approval, is unworkable.
- 113 Secondly, the requirement that the land be developed for the purpose for which it is being appropriated at the time of application for virtually any development, is unreasonable.
- 114 There is a lack of clarity in the Amendment about the intended mechanism for procuring private land for a public purpose, its timing and ultimately, its funding. The process appears to be one that is evolving.
- 115 The MAC in its October 2017 Report⁵³ addressed the issue and proffered the following:

'The MAC understands that the new open space identified in the draft Framework can be delivered via the operation of the open space contribution requirements. However, it is not clear how land for other forms of community or transport infrastructure is to be reserved and ultimately acquired for its intended public purposes.

Certain types of local infrastructure will be needed to support the orderly development of individual sites (for example the creation of local internal road networks to support development access on larger sites). This type of infrastructure can be simply treated as 'developer works' and does not need to form part of a wider development contributions or land acquisition strategy.

Land for various other types of local infrastructure is required to support the wider functioning, amenity and place making of a precinct. This includes new road links, road widenings, local parks and community facilities. For this type of infrastructure there are beneficiaries beyond a single land owner whose land the proposed infrastructure might happen to be on.

The MAC supports the view that infrastructure such as this that serves a wider benefit be considered for inclusion in a Development Contributions Plan. Such plans provide a sound mechanism for the orderly funding and delivery of local infrastructure, where it can either be delivered by state or local government agencies

⁵³ See pages 24-25 MAC Report, October 2017.

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undertaking works from available DCP funds, or where landowners transfer land or undertake works as an 'in kind' offset to the site DCP obligations.

The MAC recommends that where specific land areas are required for a public purpose but it is not intended to be funded via a development contributions plan, then a Public Acquisitions Overlay be applied to the land. This might apply to regional scale infrastructure such as train stations, transport corridors, regional health or education facilities.'

- 116 Ultimately, the MAC recommended that a PAO be applied to land which is required for a public purpose but is not intended to be funded via a DCP or open space provision.⁵⁴ The mechanisms said to apply under the proposed controls are at odds with the outcomes supported by the MAC at least in so far as the appropriation of land for new streets, laneways and open space. It appears that community infrastructure will be funded via existing development contributions currently collected and a future, yet to be finalised scheme.⁵⁵
- 117 It seems to me there is no apparent land acquisition strategy in place to assure the delivery of the infrastructure or the timing of when that infrastructure would be delivered. The Ministers Part B - Submission draws attention to the Taskforce Statement, Fishermans Bend Options for the Funding of Open Space document, dated 13 March, 2018. It identifies that land will only be acquired in instances where whole sites are proposed to be used for public open space. Again, this proposition is not reflected in the proposed planning controls.
- 118 The planning framework provides a mechanism to secure privately owned land that has been earmarked for a public purpose and that necessarily involves the application of a PAO. In the circumstances, I am therefore supportive of the application of a PAO as the desired mechanism for the appropriation of land for a public purpose.
- 119 There is a desire to establish certainty, transparency and consistency with the introduction of the new planning controls over Fishermans Bend. In my opinion, the appropriation of private land and the manner in which the Amendment addresses this issue does little to engender stakeholder confidence. This is a significant concern particularly given that collaboration with the private sector is said to be fundamental to the realisation of the vision for Fishermans Bend.

3.7 Management of the transition process

- 120 In my opinion, there are several provisions contained within the proposed controls relevant to the issue of transition which require further consideration. These relate to the following:
- That, as a permit requirement in relation to subdivision, the layout of the subdivision must make provision for any new streets, laneways or public open space generally in accordance with the relevant Map in the Schedule (CCZ1);

⁵⁴ See page 25 MAC Report, October 2017.

⁵⁵ See pages 3-4 of the Part B Submission of the Minister dated 14 March 2018.

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- That, as a permit requirement in relation to buildings and works, a permit must not be granted to construct a building or construct or carry out works where the provision for any new street, laneway or public open space generally in accordance with the relevant Map is not provided.
 - Making the 'as-of-right' use of land (under the CCZ1) for sensitive uses conditional on compliance with any relevant threshold distance contained in Clause 52.10.
 - Imposing a requirement that applications for permit for a sensitive use within a certain threshold distance of specified uses be accompanied by an Amenity Impacts Plan (which has certain prescribed information requirements).

Streets, lanes and open space

- 121 I understand that the all new streets, laneways and public open space required to be provided in accordance with the above will be required to be vested in the relevant authority without comepnasation.
- 122 As I understand the effect of the above controls is that "no development including subdivision" will be permitted unless the requirements above are met. That is, any existing operator (landowner/occupier) requiring a permit for buildings and works will be required to set aside, construct and/or remediate and vest the land required for the public purpose (i.e. street, laneway or open space) whether that land is required at that point in time, or indeed 10, 20 or 30 years hence.
- 123 Quite apart from the legal equity implications of such requirements (which others will address in more detail), the practicality of the above requirements in terms of facilitating the ongoing use and operation of legitimate existing uses raises concerns. The 'no permit required' exemptions are of a very minor or insignificant nature and offer little comfort in managing the pathway to transition.
- 124 Legitimate existing businesses throughout the FBURA should be entitled to more certainty in terms of their future than that allowed by the proposed provisions. Furthermore, as for the existing landowner being required to 'vest' the affected land in the name of the relevant authority as a permit condition or requirement for any development as a matter of plain principle, is both unreasonable and unfair.
- 125 The tests relevant to the legitimacy of permit conditions as a matter of established planning principles require that a planning permit condition must:
- be reasonable;
 - relate to the planning permission being granted;
 - fulfill a planning purpose; and
 - accurately convey its intended effect and avoid uncertainty and vagueness.

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126 It would be a very unreasonable requirement in the circumstances, if for example a landowner/business operator couldn't obtain a planning permit to add-on a lunch room or amenities for their employees without first 'vesting' land required for a street, laneway or public open space to the relevant authority. Furthermore, that they might have to demolish existing buildings and in turn build streets and laneways to meet their obligation highlights the impracticality if not the absurdity of the provision.

Sensitive uses

127 The workability of the requirement regarding the reverse amenity/agent of change provisions in the CCZ1 needs to be re-evaluated. I am not satisfied on the material I have reviewed that a complete understanding of the range of industrial uses that occurs throughout the FBURA or the implications of the proposed controls in this regard has been adequately demonstrated.

128 Secondly, the trigger to generate an Amenity Impacts Plan (**AIP**) whilst at face value, appears to be a reasonable requirement in the management of potentially conflicting land uses, needs to be further evaluated in terms of its practical application. How the AIP is to work in practice, who prepares it, what information does it include, who has an input into it, what is the basis of its assessment, what status does it have from a legal perspective, who enforces it and what constitutes 'acceptable levels' in terms mitigating potential amenity impacts of existing industry on sensitive uses, all require careful consideration.

129 The proliferation of industrial uses throughout the FBURA and proximity of the land to the Port causes it to be regarded differently to traditional brownfields renewal areas sustaining remnant or redundant industry. Such is not the case in Fishermans Bend, in which case the pathway to a successful transition presents a challenge to the ultimate realisation of the vision.

3.8 Affordable housing

130 The issue concerning the provision of affordable housing is one of considerable focus in the Framework and the Amendment. The Framework acknowledges Fishermans Bend is an opportunity to increase the supply of a diverse range of housing, including affordable housing. There is no question that is the case with Fishermans Bend, as it is with all urban renewal areas.

131 In this regard the Framework for Fishermans Bend states:

*'The aim is for at least six per cent of housing across Fishermans Bend to be affordable. This includes a range of affordable housing models, typologies, and occupancies, from short-term crisis accommodation through to long-term secure housing for people with special needs, the aged and key workers employed in essential services. Government at all levels, private industry and the not-for-profit sectors will need to work in partnership to provide more affordable housing.'*⁵⁶

132 There is also no question as to the significance of the issue of 'affordable housing' and the challenge ahead. But as to the model for achieving 6% of housing across Fishermans Bend as 'affordable', what that means and

⁵⁶ See page 50 Executive Summary: Framework

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whose responsibility it is, neither the Framework nor the proposed controls are clear.

- 133 Under the heading ‘Housing that is affordable and accessible’, the Framework acknowledges the following:

‘Affordable housing is essential to Victoria’s productivity, liveability and social equality. Providing a range of housing options to a diverse cross section of Victorians will be important in Fishermans Bend. The Victorian Government’s housing affordability strategy Homes for Victorians provides a coordinated approach across government to address the state’s housing affordability challenges. As a major renewal area in proximity to the jobs and services of central Melbourne, Fishermans Bend is a unique opportunity to leverage the initiatives of Homes for Victorians and improve social and affordable housing supply in a well-located area.’⁵⁷

- 134 The Framework draws a distinction between social and affordable housing although there is no explanation as to the differences between the terms in the Framework or the planning controls. In terms of mechanisms to improve the supply of social and affordable housing, the Framework references the following strategies:

3.5.1 *Support a partnership approach between government, the development industry and the community housing sector to deliver a range of affordable housing options.*

3.5.2 *Introduce planning incentives for the delivery of affordable housing via a Floor Area Uplift. Delivery of affordable housing should be the highest priority public benefit sought through the uplift. Affordable housing will be required to be transferred to registered housing providers to secure this affordable housing in perpetuity.*

3.5.3 *Pursue mechanisms to incorporate social and affordable housing as a proportion of new development. This could operate in tandem with the proposed FAU incentive scheme.*

3.5.4 *Identify potential current and future government sites that would be suitable for affordable housing.*

3.5.5 *Explore the option to collect ‘cash-in-lieu’ contributions instead of the provision of affordable housing on-site. Explore the establishment of a ‘Fishermans Bend Affordable Housing Trust’ (or similar) which may be required if these are introduced in the future.*

- 135 The Framework adopts the following definition of ‘affordable housing’:

‘Housing that is appropriate for the needs of a range of very low to moderate income households, and priced (whether mortgage repayments or rent) so these households are able to meet their other essential basic living costs (Plan Melbourne definition).’⁵⁸

⁵⁷ See page 15 Metropolitan and economic context: Framework

⁵⁸ See page 84 Glossary: Framework.

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136 The Framework does not define what it means when it refers to social housing (as distinct from affordable housing). Plan Melbourne on the other hand not only defines 'affordable housing' (in the same terms as the Framework) but also expressly defines the following terms:

Community housing: *Refers to a type of not-for-profit social housing. Community housing offers secure, affordable, rental housing for people on very low to moderate income households with a housing need.*

Social housing: *A type of rental housing that is provided and/or managed by the government or by a not-for-profit organisation. Social housing is an overarching term that covers both public housing and community housing.*

Public housing: *Long-term rental housing that is owned by the government. Its purpose is to accommodate very low to moderate income households that are most in need.*

137 The operation of the FAU is said to be 'informed' by the document titled 'How to Calculate Floor Area Uplifts and Public Benefits in Fishermans Bend, October 2017.'⁵⁹ Confusingly, that document defines "affordable housing" in a different way, as follows:

'Affordable housing: *Is housing 'gifted' (provided in perpetuity with the assets transferred at no cost) to a Registered Affordable Housing Association and achieves requirements set out below:*

The affordable housing must comply with the requirements set out below.'

138 The delivery of 'affordable housing' under the terms of the Framework and proposed planning controls is to be achieved by two mechanisms:

- Local policy at Clause 22 supporting the provision of 6% affordable housing (whatever that means) across Fishermans Bend; and
- Use of the FAU provisions to provide 'affordable housing' (in the form of social housing) as a public benefit.

139 When interpreting the Framework, the proposed controls and local policy what becomes apparent is that:

- The 6% affordable housing target applies across the whole of Fishermans Bend and potentially encompasses a diverse range of accommodation types including short-term crisis accommodation, long-term secure housing for people with special needs, the aged and key workers employed in essential services. Although not acknowledged in the provisions, I would also construe this *at the very least* to include retirement accommodation, student accommodation, boarding houses, nurse's homes and hostels.

⁵⁹ See paragraph 56 of the Part B Submission of the Minister dated 14 March 2018.

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- The affordable housing contemplated by the FAU scheme as a '*public benefit*' is that which would more accurately reflect the term 'social housing'. Social housing therefore is a form of affordable housing and would presumably, constitute in part a component of the 6% affordable housing target.
- 140 There appear to divergent views on the interpretation and application of the controls relevant to affordable housing and possibly, what in fact the term is expected to encompass and how and in what form it should be delivered.
- 141 On a broader level, housing affordability is also directly impacted by the provision of substantial housing opportunities particularly in dense, highly populated locations with good access to services and facilities. The focus of Plan Melbourne for example, in supporting the maximisation of development opportunities in urban renewal areas and therefore increasing the supply of housing is directly relevant to the issue of housing diversity and affordability.
- 142 The broad application of a 6% affordable housing target, even one that is advanced as a local policy, is therefore fraught with difficulties in terms of how it will be implemented in practice. The task of addressing affordable housing is made more difficult by the absence, at this point in time, of any Statewide framework that addresses the issue.
- 143 In the absence of any overarching Government coordinated action plan geared directly towards addressing the provision of affordable housing, individual projects within and across differing municipalities have been targeted by Councils on an 'ad hoc' basis to at least in part tackle the provision. This has led to inconsistency, inequity and uncertainty in decision making.
- 144 The Government is said to be addressing the issue of housing affordability through variously stated actions including its policy, Homes for Victorians, Plan Melbourne, the VCCF and the [proposed] Planning and Building Legislation Amendment (Housing Affordability and Other Matters) Act 2017 (**HA&OM Act**).
- 145 The HA&OM Act seeks to facilitate the provision of affordable housing in Victoria, by enabling a responsible authority to enter into a s.173 agreement for the development or provision of affordable housing. Under the HO&AM Act, affordable housing is housing, including social housing, that is appropriate for the housing needs of any of the following:
- a. Very low income households;
 - b. Low income households;
 - c. Moderate income households.
- 146 Social housing has the same meaning as in the Housing Act 1983 which is:
- Social housing means -*
- a. *public housing; and*
 - b. *housing owned, controlled or managed by a participating registered agency.*
- 147 It is my view that the issue of affordable housing is important and the opportunity presented by Fishermans Bend, as with all of the MURP's, is one which should be optimised in terms of not only maximising housing supply

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but also addressing affordability of housing. In doing so there needs to be some level of coordination across Government in not only establishing the framework for delivery of affordable housing but also consistency in the implementation of mechanisms aimed at securing its provision.

- 148 I am not satisfied that the Framework or indeed, the manner of its translation into the proposed controls and policies embodied in the Amendment demonstrates a coordinated, clear or reasonable approach to the issue of housing affordability. It perpetuates uncertainty in terms of the issue and an ongoing lack of accountability in terms of addressing housing affordability more generally.

3.9 Drafting and complexity

- 149 In my opinion, criticisms of the drafting and complexity of the Amendment provisions are well-founded.
- 150 The proposed planning controls supported by planned changes to the LPPF require careful review stemming from the fact that the Framework as presently drafted includes and relies upon a number of key assumptions that present inherent difficulties.
- 151 I do not propose to address the remedies for the various controls and policies and what changes might be necessary, as that task (if it were at all possible) remains for others to address.
- 152 I come back to a key proposition advanced by the Framework when it refers a desire that there be certainty, transparency and consistency with the introduction of new planning controls. On the basis of the complex and overly prescriptive nature of the planning controls in this case, a streamlining of provisions is an absolute necessity.
- 153 I am aware of the concern about a lack of transitional arrangements in the controls that address the issue of approvals and/or applications that are caught up in the process to date. It is not sufficient for the Government to simply dismiss this issue unilaterally without there being a discussion about its implications.
- 154 The reason why we have permits and 'live' applications across Fishermans Bend is because of the framework put in place by the Government at the outset and the decisions taken by Government over the intervening period. Therein lies in my view, an inherent responsibility for which the decisions taken to date by Government should be held to account.
- 155 It is not sufficient for the Government to simply say, bad luck. The desire for collaboration and partnering with the private sector is deserving of more respect than that being shown. I am therefore supportive of transitional arrangements that allow for a fair and reasonable assessment of the merits of each application.

4 Conclusion

156 Having regard to the foregoing discussion, the following summarises my key concerns:

- The Framework for Fishermans Bend is in need of critical review before it can reasonably be advanced as representative of a reasonable or acceptable planning outcome for the area;
- The Framework and Amendment do not provide sufficient direction to allow for informed decision making on the part of stakeholders involved in future investment and/or development of Fishermans Bend, including Government;
- A critical analysis of key assumptions that underpin the Framework for Fishermans Bend exposes deficiencies in the planning for the area, potential funding and likely delivery of outcomes;
- The basis of the vision for Fishermans Bend and the resultant outcome risks undercapitalising on the potential of the area in terms of its contribution to major urban renewal and the realisation of metropolitan planning strategy (Plan Melbourne).

157 I am not in favour of a process that appears to prioritise expediency over quality of outcome. Much has been made of the uniqueness of Fishermans Bend as a State significant urban renewal opportunity capable of setting new benchmarks.

158 Neither the Framework or the Amendment documentation as presently drafted, come close to attaining the standard of setting new global benchmarks of any description.



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